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Kancelaria Patentowa
Aleksandra Marcirska
ul. M. Dabrowskiej 9/57
01 - 903 Warszawa, Poland
Mobile: + 48 602 870 070
Tel.: + 48 22 865 54 56
Fax.: + 48 22 834 86 47
E-Mail: marcinska@poczta.fm

European Patent Office Munich als IPEA
Erhardtstr. 27
D - 80331 Munich
Germany

Warszawa, April 29, 2006

Re: International Patent Application No: PCT/PL2004/000015

**Applicant: Henryk Kułkowski,
DDU/04.02**

**Petition for re-opening of international preliminary examination for the
application PCT/PL2004/000015 and making a correction of
International Preliminary Examination Report for the application
PCT/PL2004/000015**

Acting in the name and on behalf of my Client, Mr. Henryk KUŁAKOWSKI, ul. Poniatowskiego 94/22, 37 - 450 Stalowa Wola, Poland /PL/, on the base of PCT International Search and Preliminary Examination Guideline VI-19.25, I claim for re-opening of international preliminary examination for the application PCT/PL2004/000015 and making a correction of International Preliminary Examination Report for the application PCT/PL2004/000015.

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Justification

On September 3, 2004, International Searching Authority established the international search report and the written opinion of the International Searching Authority, under Rule 43bis1 PCT.

Answering to the written opinion of September 3, 2004, on April 17, 2005, the Applicant sent amended claims, under Article 19 PCT and a statement to the written opinion of ISA under Article 19 (1) PCT.

The statement to the written opinion presented arguments pointing out the lack of similarity between the international application PCT/PL2004/000015 and the documents opposed in the international search report: US2003/144016 A1 and US-A-5 943 611. Furthermore, the statement of April 16, 2005, pointed out that:

"If the arguments presented above and the changes introduced to patent claims are not to convince the International Searching Authority [the intention was: International Preliminary Examining Authority] to issue a positive report for the present application, we kindly ask for additional chance to introduce amendments and present our arguments".

On April 4, 2006, the international preliminary report on patentability was established, under Article 36 PCT, Rule 70 PCT.

In the report, chapter I entitled "Basis of the report", one reads:

"The amendments in claim 1 defining "use of an SS7 signalling channel" or "the SS7 signaling for text interface" (see lines 5 and 18) go beyond the disclosure in the international application as filed, contrary to Article 34(2)(b) and 19(2) PCT (see also the PCT-Guidelines, chapter VI-20.9 to 20.19)

Consequently, the international preliminary examination report (Article 35(1) PCT) has been established as if the above amendment had not been made according to rule 70.2(c) PCT".

In the Applicant's opinion, the international preliminary report on patentability delivered under Article 36 PCT, Rule 70 PCT, has been established with infringement of PCT regulations, resulting in exceptional circumstances giving grounds for the petition for re-opening of international preliminary examination and making a correction of the Preliminary Examination Report for the application PCT/PL2004/000015 for the following reasons:

1. International Preliminary Examining Authority did not notify the Applicant that the claims amended under Article 19 PCT, in IPEA's opinion, go beyond the disclosure in the international application as filed.

According to Article 34 (2)(c) PCT, the Applicant should receive at least one written opinion from the International Preliminary Examining Authority, if the International Preliminary Examining Authority is of the opinion that the application does not satisfy conditions mentioned in this Article.

Furthermore, Rule 66.2 PCT explicitly states that:

- a) „*If the International Preliminary Examining Authority (iv) considers that any amendment goes beyond the disclosure in the international application as filed [...] the said Authority shall notify the applicant accordingly in writing.*
- b) *The notification shall fully state the reason for the opinion of International Preliminary Examining Authority.*
- c) *The notification shall invite the applicant to submit a written reply together, where appropriate, with amendments.*

The Applicant **did not receive any written notification from IPEA**. As a result, he was not conscious of the fact that, in IPEA's opinion, the amended claims sent to the International Office on April 17, 2005, go beyond the disclosure of the invention.

2. The Applicant had not been notified in any other way of IPEA's strictures upon the amended claims.

According to the IPEA's practice and guidelines comprised in the rule 66.6 PCT, International Preliminary Examining Authority may contact an applicant in an informal manner, e.g., by telephone, by mail or by electronic mail (such actions were undertaken in the cases of other inventions of the Applicant).

Of course, an informal contact with an applicant depends only on the goodwill and intention of International Preliminary Examining Authority. Unfortunately, nobody contacted the Applicant and his attorney in the matter of the application PCT/PL2004/000015.

Such an action of the International Preliminary Examining Authority is even more surprising, taking into consideration that the Applicant is a moral person bearing not only intellectual efforts but also significant financial expenses to protect his inventions. That is why any suggestion of IPEA is considered with the highest attention. So far the Applicant always replied to any suggestion of PCT Authority - also in this case the Applicant filed amended claims along with the statement presenting arguments answering to the IPEA's strictures concerning the novelty and the lack of inventive step of PCT/PL2004/000015.

The lack of any IPEA notification that the claims, in IPEA's opinion, go beyond the disclosure in the international application as filed, should be treated as an infringement of all above mentioned provisions of the PCT, as well as a symptom of unequal treatment of applicants.

3. International Preliminary Examining Authority had enough time to inform the Applicant that the claims go beyond the disclosure in the international application as filed.

The claims amended under Article 19 PCT were filed to the International Office, as well as to the EPO acting as the IPEA, on April 17, 2005. The International Preliminary Report on patentability was established on April 4, 2006. One can reach a conclusion that IPEA had enough time for notifying the Applicant of IPEA's remarks concerning the claims and allowing the Applicant to correct the claims and the description under Article 34 PCT.

4. The claims amended under Article 19 PCT, filed on April 17, 2005, do not go beyond the disclosure in the international application as filed.

Independently on this, the changes made to the claims filed on April 17, 2005, do not go beyond the disclosure in the international application as filed.

As mentioned above, IPEA stated that definitions "use of an SS7 signalling channel" or "the SS7 signaling for text interface" go beyond the disclosure in the international application as filed. However, as is commonly known, the USSD functionality is realized on the basis of the SS7 signalization. Detailed procedure of the USSD service is described by ETSI specifications and standards (European Telecommunication Standardization Institute), in which one can find, that the network layer, in which the USSD service is realized, is a signaling network SS7. Therefore, the scope of protection had not been extended, but only specified in more detail from the technical point of view, according to the Authority's suggestion comprised in the written opinion of September 3, 2004, by going down to a lower level of the network layer. The service described in the amended claims cannot be realized otherwise, independently on a network layer under consideration.

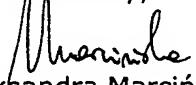
5. Amended claims under Article 34 PCT.

As an enclosure I send amended claims under Article 34 PCT, with a request for taking them into account during the re-examination of the invention PCT/PL2004/000015. The amendment - mainly to claim 1 - is intended to stress the essence of the invention and differences between the invention and the opposed documents. At the same time we would like to point your attention that IPEA was comparing the claims of PCT/PL2004/000015 with examples from the opposed documents. The comparison led to a false interpretation of the invention essence. In the case of the invention under consideration, the result was comparing two inventions having completely different senses and different ways of realization. The invention under consideration relates to a method of effecting a telecommunication connection, while the opposed documents relate

to procedures undertaken after a connection has been effected, based on indexing an object in a telecommunication network. An accidental similarity of used technologies (numeration) does not mean that both inventions solve the same problem. The differences between them can be seen after an analysis of their detailed description.

Having in mind the above I claim for re-opening of international preliminary examination and making a correction of the International Preliminary Examination Report for the application PCT/PL2004/000015 entitled "Method of effecting access to services in a telecommunication network".

Your sincerely,


Aleksandra Marcińska
Patent Attorney

Enclosed:
Amended claims